STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 18, 2011
v	No. 299062 Saginaw Circuit Court
DORIS LEVETTE TELLIS, Defendant-Appellant,	LC No. 09-033628-FH

Before: M.J KELLY, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

A jury convicted defendant of operating while intoxicated, third offense (OWI 3d), MCL 257.625(1), (9), operating a motor vehicle while license suspended or revoked, MCL 257.904(1), and resisting or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant to seven months in jail and three years probation. Defendant appeals as of right. We affirm.

On the night in issue, a Michigan State Police Trooper was flagged down by a pedestrian who reported nearly being struck by an older blue Buick driven by a black female. The pedestrian directed the trooper to a vehicle parked in the parking lot of discount store. While he was speaking to the pedestrian, the trooper was altered to a police dispatch reporting an erratic driver in the area driving an older blue Buick. The trooper and other officers spoke with defendant after she exited the store. Defendant was subsequently arrested, and a blood alcohol test revealed that her blood contained .27 grams of alcohol per 100 milliliters, or three times the legal limit of .08 grams of alcohol per 100 milliliters.

Defendant first argues on appeal that she was denied her constitutional right to confrontation by the trial court's admission of the taped recording of a 911 call made by an unknown person reporting an erratic driver in the area where defendant was later arrested. Although the call was not transcribed into the record, the arresting officer testified that the caller

reported a woman in an older model blue Buick driving erratically in the area where defendant was found and arrested. The 911 caller did not testify at trial.

Citing *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), defendant argued that the admission of the recorded 911 call violated her Sixth Amendment[1] right to confrontation because of the "testimonial" nature of the caller's statements. In *Davis v Washington*, 547 US 813, 822; 126 S Ct 2266; 165 L Ed 2d 224 (2006), the Court held the following:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Defendant argues that the 911 caller's statement was not made during an ongoing emergency, because defendant was in the discount store when the caller spoke to the dispatcher. This assertion inappropriately restricts the concept of an emergency. According to the report of the on-scene eyewitness and also, apparently, the 911 caller, defendant had been driving on the roadways right before coming to the store. The evidence was that the car was being driven erratically and had almost run over the on-scene eyewitness who had flagged down the state trooper. The vehicle was still running and had its blinkers on. Under these circumstances, it is reasonable to conclude that the emergency was ongoing, i.e., that the driver of the vehicle was going to return to it and resume driving. The threat posed by her recklessness was no less imminent because she had stopped briefly to patronize the discount store.

The *Davis* Court directly addressed the question of whether statements made in a 911 call, which includes questioning by police officials,[2] are testimonial in nature and thus subject to the Confrontation Clause. The Court stated that

> The question before us . . . is whether, objectively considered, the interrogation that took place in the course of the 911 call produced testimonial statements. When we said in *Crawford* that "interrogations by law enforcement officers fall squarely within [the] class" of testimonial hearsay, we had immediately in mind (for that was the case before us) interrogations solely directed at establishing the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator. [*Id*. at 826 (citations omitted).]

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[1] US Const, Am VI.

[2] For purposes of its inquiry, the Court found that 911 dispatchers were agents of law enforcement or law enforcement personnel "when they conduct interrogations of 911 callers." *Davis*, 547 US at 823 n 2.

The caller in *Davis* "was speaking about events *as they were actually happening*, rather than describ[ing] past events," and "any reasonable listener would recognize that [the eyewitness] was facing an ongoing emergency." *Id*. at 827 (emphasis in original). In addition, "the nature of what was asked and answered . . . , again viewed objectively, was such that the elicited statements were necessary to be able to *resolve* the present emergency, rather than simply to learn (as in *Crawford*) what had happened in the past." *Id*. (emphasis in original). The Court thus concluded that because the "primary purpose [of the 911 interrogation in *Davis*] was to enable police assistance to meet an ongoing emergency," the nature of the statements made during the call was not testimonial. *Id*. at 828.

Given the description of the content of the 911 call in issue here, its admission was not error. It appears clear that the purpose of the information given was to elicit help from the police to address what appeared to be a serious emergency to the public.[3]

Defendant also challenges the evidentiary support for her convictions. She first argues that there was insufficient evidence that she was driving the Buick, and so her convictions for OWI and driving with a suspended license should be reversed. In addressing this argument, we conduct a de novo review of the record, but not through an impartial lens. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We frame the evidence in the light most favorable to the prosecution to determine if any rational trier of fact could have found that the essential elements of the crimes were proven beyond a reasonable doubt. *Id*.

With respect to the driving based convictions, the issue is significantly one of credibility. Mindful of the jury's superior opportunity to assess witness credibility, we defer to its credibility determinations, as evidenced by the decision rendered. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The arresting officer testified that he first confronted defendant when she came out of the discount store and walked to the driver's side of her vehicle, which had been left running while she was in the store. This officer and the other officers testified that defendant told them that she was driving, and that she was "fine" to drive herself back home because she had only driven from around the corner. Only after her arrest and en route to the jail did defendant volunteer that her cousin "Joe" had actually been driving her vehicle. According to the arresting officer, she refused to give Joe's last name when he asked for it. The officers never saw defendant with another individual at the store. Joe was never produced as a witness. The evidence presented by the prosecution was sufficient to permit a rational trier of fact to find that the elements of the OWI and driving with a suspended license charges were proven beyond a reasonable doubt.

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[3] Defendant also complains that the state trooper obtained statements from the eyewitness at the scene that were testimonial in nature. The trooper testified that the eyewitness told him he "almost got ran over" by "a lady driving an older blue Buick" and pointed out the car in the dollar store parking lot. These statements were certainly explaining the event immediately after it had happened, MRE 803(1) (present sense impression), and likely excited utterances, MRE 803(2), as well.

Defendant also challenges her resisting and obstructing conviction.

> Under MCL 750.81d(1), the elements required to establish criminal liability are: (1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties. [*People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010).]

The term "obstruct" is statutorily defined as including "the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a).

Defendant argues that insufficient evidence was adduced to show that she intended to obstruct the officers. She contends that she was simply "behaving as an intoxicated person, -- loud and belligerent." This assertion evidences a misunderstanding of the elements of the offense. What is required is that defendant had knowledge or had reason to know that the officers were police officers performing their duties when she obstructed their actions both as they attempted to secure her and thereafter. The evidence adduced clearly shows that defendant was aware that she was being questioned by police officers upon exiting the store. Indeed, defendant herself testified that she was approached by a police officer after she exited the store. Moreover, a rational jury could certainly conclude simply from evidence of the nature of the exchange between defendant and the officers—in which defendant was questioned about driving the vehicle, asked to produce her driver's license, and asked to take a field sobriety test—that defendant acted with the requisite knowledge. Therefore, defendant is not entitled to reversal on her conviction for resisting or obstructing arrest.

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck